

Remarks:

In the September 7, 2005, Office Action, Claims 113-121 were objected to because of informalities as depending from cancelled claims. Claims 142 and 143 were rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. On the merits, Claims 1, 2, 6-9, 14, 18, 19, 110, and 122 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Herber et al. (U.S. Patent No. 5,525,363). Claims 1, 2, 6-9, 14, 18, 19, 75, 79, 82-86, 104, 107-112, 122-130, 132, 134-137, and 142-147 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. (U.S. Patent No. 6,327,754) in view of Stolmeier et al. (U.S. Patent No. 6,257,763). Claim 16 was were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Herber et al. in view of Hayashi et al. (U.S. Patent No. 6,074,097).

Claims 16, 93, 131, 138, 139, and 141 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. in view of Stolmeier et al. and Hayashi et al. Claim 133 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. in view of Stolmeier et al. and May (U.S. Patent No. 5,725,312). Claim 140 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Belmont et al. in view of Stolmeier et al. and Boeckmann et al. (the patent number was not provided by the Examiner but Applicants believe that this reference is U.S. Patent No. 4,846,585).

Claims 113-121 have been cancelled, thereby removing the informalities noted by the Examiner. The Examiner's assistance in noting these matters is appreciated.

Claims 142 and 143 have been amended to correct the issues noted by the Examiner in rejecting these claims under 35 U.S.C. Section 112, second paragraph, as being indefinite. The Examiner's assistance in noting these issues is gratefully acknowledged.

Applicants regard as their invention a reclosable bag formed of a single sheet of web material having a fold therein which forms the top of the bag. Two areas of structural weakness are located on opposite sides of the fold. A reclosable fastener has a skirt structure including a distal portion which is coupled to the web material, and at least part of the reclosable fastener extends past the two areas of structural weakness and into the fold. The portion of the web material forming the fold and between the two areas of structural weakness create a portion which may be removed, with engageable fastener tracks or halves which extend beyond the areas of the structural weakness being exposed and not covered by or located between portions of the web material, thereby making the fastener easy to access manually to obtain access to the contents of the bag and to reseal the bag. The bag is filled through the ends of the sheet of web material which are distal from the fold. The amendments to the claims further clarify and specify these limitations. Applicants believe that this invention is not taught or suggested in any of the references provided by the Examiner in the September 7, 2005, Office Action, or, indeed, by any other reference of which Applicants are aware.

The claims clearly define over the Herber et al. reference, in which the perforation is not located with respect to the fastener structure in a manner which allows the

engageable fastener tracks or halves to extend past the areas of structural weakness. In contrast, in the Herber et al. reference, the areas of structural weakness (the lines of perforation 254) are clearly well above the male and female closure members (the male profile 218 and the female profile 220). Thus, the independent claims all clearly define the present invention over the Herber et al. reference.

The Belmont et al. reference teaches a bottom-fill embodiment in which the fastener is located in the fold of the bag. Notably, Belmont et al. does not include any areas of weakness in the portion of the bag including the fold. The Examiner has combined Belmont et al. with the Stolmeier et al. reference, which teaches placing a hood formed of a sheet 60 over a reclosable closure 70. The hood of the Stolmeier et al. reference has perforations located therein that allow the hood to be torn off. There are several problems with this combination, not the least of which is that there is no justification for making the combination. The obviousness rejection fails to point to either a teaching or an inference in either of the cited references or to anything which is found in the knowledge of one skilled in the art which could lead one skilled in the art to combine the references together.

With respect to an obviousness rejection based upon a combination of references, the Court of Appeals for the Federal Circuit has stated that "virtually all [inventions] are combinations of old elements." Environmental Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 2003); see also Richdel, Inc. v. Sunspool Corp., 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983) ("Most, if not all, inventions

are combinations and mostly of old elements.") Since examiners will often find every element of a claimed invention in the prior art, if identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would issue. However, the Court of Appeals for the Federal Circuit has stated that "the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references." Ecolochem, Inc. v. Southern California Edison Co., 227 F.3d 1361, 1371, 56 USPQ2d 1065, 1073 (Fed. Cir. 2000).

As stated by the Court of Appeals for the Federal Circuit, "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight." In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). See also M.P.E.P. Section 2143.01(IV). It is clear that the Examiner has failed to present a prima facie case of obviousness.

Further, Applicants maintain that even if the references could be combined (which they cannot), the combination would not yield the claimed invention. Stolmeier et al. teaches adding a hood around a fastener. Thus, if Stolmeier et al. was combined with Belmont et al., it would yield the addition of a hood to the embodiment shown by

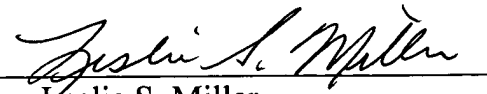
Belmont et al. in Figs. 1 and 2. What the Examiner proposes is to grossly modify Stolmeier et al. to not use a hood at all, but to take the perforations which were in the hood of Stolmeier et al. and move them to the web of Belmont et al. The only possible justification for a combination of the references in the manner they have been combined by the Examiner is "the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983). For this additional reason, the Examiner's obviousness rejections are improper and are not sustainable.

The Hayashi et al., May, and Boeckmann et al. references are cited as a secondary references to teach areas of weakness of different types, perforation strips, and tear tapes, respectively, and fail to fill in the deficiencies of the other references or to teach the construction of the invention as presently claimed.

Accordingly, Applicants believe that Claims 1, 2, 6-9, 14, 16, 18, 19, 75, 79, 82-86, 93, 104, 107-112, 122-128, and 130-147 are patentable at this time. These claims remain pending following entry of this Amendment, and are believed to be in condition for allowance at this time. As such, Applicants respectfully request entry of the present Amendment and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application

could so be expedited, the Examiner is requested to call Applicants' undersigned attorney at the number listed below.

Respectfully submitted:

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